



POLICE DEPARTMENT

October 14, 2009

MEMORANDUM FOR: Police Commissioner

Re: Detective Nathaniel Tauber
Tax Registry No. 927580
106 Precinct
Disciplinary Case No. 83627/08

Detective Matthew Lingeza
Tax Registry No. 928648
41 Precinct
Disciplinary Case No. 83632/08

The above-named members of the Department appeared before me on January 6,
June 12 and June 18, 2009, charged with the following:

Disciplinary Case No. 83627/08

1. Said Detective Nathaniel Tauber, assigned to Manhattan South Enforcement Squad, while on-duty, on or about and between November 7, 2006 and April 24, 2007, in the County of New York, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did, on one or more occasions, improperly complete Supporting Depositions, in that said Detective did allow other Members of Service to wrongfully sign Supporting Depositions on his behalf.

PG 203-10 Page 1, Paragraph 5 – GENERAL REGULATIONS
VICE ENFORCEMENT DIVISION MANUAL – PROCEDURE 10-10, PAGE 6
PARAGRAPH 6 DUTIES AND RESPONSIBILITIES

Disciplinary Case No. 83632/08

1. Said Detective Matthew Lingeza, assigned to Manhattan South Enforcement Squad, while on-duty, on or about and between March 10, 2004 and May 9, 2007, in the County of New York, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did, on one or more occasions, improperly complete Supporting Depositions, in that said Detective did wrongfully sign said Supporting Depositions on behalf of other Members of Service.

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PG 203-10 – Page 1, Paragraph 5 – GENERAL REGULATIONS
VICE ENFORCEMENT DIVISION MANUAL – PROCEDURE 10 -10, PAGE 6
PARAGRAPH 6 DUTIES AND RESPONSIBILITIES

The Department was represented by Lisa McFadden, Esq., Department Advocate's Office and the Respondents were represented by Philip Karasyk, Esq.

The Respondents, through their counsel, entered a plea of Guilty to the subject charge and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondents, having pleaded Guilty, are found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondents' Case

The Respondents each testified in their own behalf.

Respondent Detective Nathaniel Tauber

Respondent Tauber has been a member of the Department since September 29, 2000. He has been assigned to various commands including Manhattan South Narcotics and Manhattan South Vice ("Vice") in the 7 Precinct. Respondent Tauber asserted that prior to his transfer to Vice in August 2005, he did not receive any training on what his duties and responsibilities were as a vice enforcement officer. He contended that he was never given any handbooks or printed material, including the Vice Enforcement Division Manual.

Respondent Tauber testified that when he got to Vice he learned what to do by working as part of a team and by listening to the other members and the supervisors. He described a team as being made up of approximately 2 to 3 undercover officers, approximately 6 to 10 investigators, and normally one supervisor. Respondent Tauber explained that as an undercover, his job was to go out and make agreements with prostitutes and then alert the rest of the team so that they could move in and make an arrest. After an arrest was made, the team moved on to another location or returned to the command to do arrest processing. A good night's work might produce anywhere from 5 to 10 arrests.

Respondent Tauber described how the paperwork would be divided between the team, saying that some members would do fingerprinting, some would input the online booking system information, and some would do the supporting depositions. "We were under time restraints. We always had to work efficiently to minimum overtime and maximize arrests."

Respondent Tauber testified that as an undercover officer, his number rather than his signature would be put down on a supporting deposition. Respondent Tauber acknowledged that many times the supporting deposition was filled out by someone other than the undercover officer who actually took part in the operation. "There would be many different circumstances on why that would happen. Certain times maybe the undercovers weren't in the office, maybe they stepped out for food, to use the restroom, maybe they were doing some different type of work possibly like typing up vouchers, or inputting online." Respondent Tauber stated that this was standard operation in Vice, and there was a supervisor present while the paperwork was being shared amongst the members of the team.

Respondent Tauber told the Court that he always reviewed the contents of a supporting deposition prior to its submission. He testified that nothing was ever disputed regarding the facts

on any of the supporting depositions in question, and that every single one of them was “factual.” Respondent Tauber explained that he did not have to explicitly give people permission every time to write his number on a supporting deposition: “I mean it was a known thing. Everyone knew they had my permission to do it. It was common practice. They didn’t specifically walk up to me and say, Nat, can I please sign your UC number. It was done, it was common practice, they did it, I reviewed it, it was agreed upon. It’s just the way we operated.” Respondent Tauber asserted that he never permitted his UC number to be written by another member of the service without reviewing the contents of that document.

Respondent Tauber told the Court that during the time that he was in Vice, from August 2005 until March or April of 2006, no supervisor ever told him that his procedure was incorrect. He asserted that if he “had any inkling that what we were doing was wrong, it would never have been done.” He claimed, “We had absolutely nothing to gain by allowing Matt to sign my name, Nat to sign my name, Chen. Whoever signed it, signed it. There was nothing to gain by doing this.”

On cross-examination, Respondent Tauber acknowledged that while at the Police Academy he had received training regarding the completion of police paperwork. Although he could not remember anything specific, he was sure that they discussed the need for an officer to sign his own police reports. He said that he understood that if it was a “police report,” i.e., a “Department form” that he was completing, he would have to sign it himself and not hand it off to someone else to sign.

Respondent Tauber acknowledged that prior to his assignment in Narcotics he received 4 weeks of Organized Crime Control Bureau (OCCB) training related to being an undercover. The training included the fact that he would be using an undercover number rather than a signature so

that his identity would not be revealed. He acknowledged that the undercover number was essentially in replacement of his signature since in order to protect his identity he could not actually sign his name.

Respondent Tauber agreed that it would be a reasonable requirement that he prepare reports accurately.

Respondent Tauber acknowledged that there is a supervisor's office across the hall from where the supporting depositions were prepared. Because the supervisors needed to review all the paperwork, they spent at least some of the time in their own office doing that. Respondent Tauber testified that he had more than one supervising sergeant while in Vice. No supervisor ever specifically told him that he was allowed to have other officers sign his supporting depositions for him.

Respondent Tauber stated that in his prior assignments he had not had occasion to fill out any supporting depositions, but that he had filled out "an actual affidavit, the accusatory instrument." Respondent Tauber stated that he always prepared those affidavits himself, and never prepared them for anyone else. Respondent Tauber understood that he needed to sign those affidavits himself, because they were sworn documents "directed specifically towards me. . . In Manhattan South Vice, for example, if you make an arrest today, four or five days later the affidavit gets faxed over for you to sign. The accusatory instrument."

Respondent Tauber estimated that before he became an undercover he had personally made between fifty and a hundred arrests. In the past he had sat with an Assistant District Attorney (ADA). The ADA would fill out the complaint and Respondent Tauber would sign the affidavit. He said that he had signed thousands of affidavits and had never let anyone sign one

for him. He understood that when he signs a sworn document he is basically swearing to the truth of the facts in that document.

Respondent Tauber was shown a document which he identified as a prostitution supporting deposition (see Department Exhibit [DX] 1). The document indicated the defendant's name, arrest number, the undercover number, a shield number, and a date, time, and location of offense. There was a place to check off the type of sexual activity purportedly to be engaged in, and a place for the amount of United States currency agreed upon as the price of the sex act (no other type of consideration was listed as a possibility). There was also a section to indicate if the defendant made any statements during the transaction. Underneath there is a notation with a statement warning against the making of false statements.

Respondent Tauber testified that as of November 2006 he had testified in the grand jury "hundreds of times" and at perhaps fifteen trials. He acknowledged that he had often been questioned about documents that he had prepared, and had been asked if the document being presented was the one he filled out. He did not recall if he had ever been asked whether or not it was his signature on the bottom of a document. Respondent Tauber acknowledged that part of the reason for filling out reports was so that the officer can recall the facts of the case. He agreed that part of the reason the name and signature were on the document was so that the officer can later identify that he was the individual who completed it.

Respondent Tauber identified the undercover number on DX 1 as his own. He admitted that he was not the person who signed it. He had given Police Officer Bang permission to sign it for him. Respondent Tauber agreed that this scenario happened more than once, and acknowledged that there was more than one other person that had signed his undercover number on depositions.

Respondent Tauber stated that he had never signed any kind of legal document for someone else, including a supporting deposition where another individual was the undercover officer.

On re-direct examination, Respondent Tauber testified that the supervisor would routinely sign the supporting depositions.

Respondent Detective Matthew Lingeza

Respondent Lingeza had been a member of the Department since 2001 and a Detective since 2005. In 2004, he was assigned to Vice. He testified that during his training for Vice there was no training in how to fill out supporting depositions.

When asked to describe the practice in Vice with respect to filling out paperwork, Respondent Lingeza said that, "A lot of times you had several arrests. So the field team would break up the work amongst the team. Somebody would do the fingerprinting, somebody else would do the paperwork. Somebody would enter the onlines in order to get the arrest done as quickly as possible." Respondent Lingeza acknowledged that there were times when someone other than the undercover would do the supporting deposition, and that occasionally he was involved in such situations. He "assume[d]" that the reason they broke up the paperwork this way was because there were always so many arrests that needed to be processed quickly. There were supervisors present, and no supervisor ever instructed him that he was not to sign someone else's undercover number on a supporting deposition.

Respondent Lingeza stated that he had the opportunity to review those depositions when he made an arrest as an undercover, and that to the best of his knowledge the information contained therein was correct.

Respondent Lingeza estimated that he had been involved in thousands of arrests. He had also testified in court. He never was impeached with respect to the facts contained in a supporting deposition.

Respondent Lingeza testified that he had no training in the filling out of paperwork when he went into Vice, and that splitting up the paperwork in Vice was always the method they used. He claimed that "there is no benefit to it. This is just the way we did it." He testified that "if we had known that this was improper, there is absolutely no way we would have done it. I had absolutely no idea that what we were doing was wrong."

On cross-examination, Respondent Lingeza agreed that he went through Police Academy and OCCB training. This included paperwork training and the idea that an officer needs to sign his own paperwork. He stated that supervisors were present when paperwork in Vice was being filled out, and that there was a sergeant's office across the hall and a captain's office in a room directly off the Vice room. None of the supervisors ever specifically instructed Respondent Lingeza that it was okay to sign for someone else or allow someone else to sign for him.

Respondent Lingeza agreed that he had met with ADAs regarding the arrests he made. The ADA would draft a complaint and Respondent Lingeza would sign the affidavit. He said that he signed these affidavits himself because he was the only one there. He never signed that type of paperwork for another officer. Similarly, Respondent Lingeza said that he has also been involved in situations where an ADA has faxed him an affidavit to sign. He affirmed that he has always signed those documents himself. He said that he would never sign those types of documents for another officer and he agreed that these affidavits were "sworn court documents."

When asked if he was aware that the prostitution supporting depositions were sworn documents, Respondent Lingeza said, "I guess so, sure." He disagreed that the prostitution

supporting depositions were the accusatory instruments in the prostitution cases. He contended that the supporting depositions are faxed to another police officer who issues an Expedited Affidavit Program (EAP) number, and asserted that "all it does, is it excuses the arresting officer from discussing the case with an ADA. That's all this paperwork is." According to Respondent Lingeza, the following day, an ADA will fax to the precinct an "undercover corrob" containing the facts of the case contained in the supporting deposition, which is signed by the undercover. Respondent Lingeza said that he never signed a "corrob" for anyone else.

Respondent Lingeza said that he had worked as an undercover in prostitution cases. He has also testified at the grand jury and trials as a result of those cases. He acknowledged that he was shown paperwork that he completed, and was questioned as to the signature on those documents. He contended that the signatures on the documents were always his.

Respondent Lingeza agreed that part of the reason, "[i]n certain situations," that paperwork was completed was just in case an officer's recollection needed to be refreshed for testimony. Respondent Lingeza assented that his name and signature on a report would indicate that the report was prepared by him.

Respondent Lingeza recognized DX 1 as a prostitution supporting deposition. He agreed that it was a sworn document and that the bottom contains a false statement warning. Respondent Lingeza admitted that he was aware of this statement on the documents when he was filling them out. On this document, with respect to the line labeled "police officer/detective," Respondent Lingeza testified, "I would print their shield number on that line, yes."

Respondent Lingeza did not recall testifying as an undercover officer concerning a supporting deposition. He denied that he has ever permitted someone to sign a legal document

for him. He did not recall ever giving another officer permission to sign his name on a police report that he completed.

On examination by the Court, Respondent Lingeza contended that the supporting depositions "don't even look official," while the "corrobs" seemed more formal. He reiterated that the "corrob" would arrive the day after an arrest or a few days after. He did not know if the defendant was waiting to see the arraignment judge before the undercover signed the "corrob."

On re-cross examination, Respondent Lingeza identified DX 2 as an affidavit. He said that he would "absolutely not" characterize this document as the same type as the prostitution supporting deposition. When asked what the difference is, he testified that DX 2 is a criminal complaint, completed by the District Attorney's Office, whereas the prostitution supporting depositions are filled out by a police officer and faxed to another police officer. He characterized a comparison of the two documents as "apples and oranges." Respondent Lingeza disputed that the signature lines and false statement warnings on DX 1 and DX 2 were analogous. He explained that on DX 1, the false statement warning appears across the whole page and on DX 2, it is directly above the signature line. Respondent Lingeza conceded that both documents contain a summary of the facts. He admitted that the language of the false statement warning is the same on each document, and that each document contains a signature line for the undercover officer.

On continued re-direct examination, Respondent Lingeza reiterated his understanding that the false statement warning on the prostitution supporting depositions applied to the facts of the incident, which he claimed were always accurate. It never occurred to him that by "allowing someone to write the shield number, the undercover number, or by you writing someone's undercover number," that he was committing perjury or any other crime.

The Department's Case

By stipulation, a portion of testimony from a prior trial on a different Respondent, *Disciplinary Case No. 84029/08*, was admitted at the instant hearing.

Julio Cuevas

Cuevas is an ADA in New York County assigned to the Official Corruption Unit. He had been an ADA for 12 years and was formerly a supervisor in Criminal Court.

In March 2007, Cuevas learned from Executive Assistant ADA Gary Galperin, his immediate supervisor, that defendants were making certain motions to dismiss prostitution cases. Specifically, allegations were made that undercover vice officers were submitting supporting depositions that "were not in fact signed." Galperin requested that paperwork and supporting depositions created by the vice officers be collected.

Cuevas identified an exhibit (Prior Case DX 1) as a supporting deposition (Prostitution Supporting Deposition) and explained its purpose. He said that in Criminal Court, a case is "written up" containing the charges and the allegations that the charges are based on. Cuevas said the majority of criminal court complaints are based on "deponent states he is informed by another officer via civilian or witness of the actions." The complaint is then used to charge the defendant at arraignment. In order for the case to proceed forward, a supporting deposition is used to eliminate the hearsay contained in the criminal court complaint. Once the supporting deposition is filed with the court and defense counsel, the prosecution of the case can proceed.

Cuevas testified that the supporting deposition that he identified in Prior Case DX 1 is a deposition specific to prostitution cases used in the Expedited Affidavit Program (EAP). He explained that some offenses such as prostitution, minor drug possession, trespass and

shoplifting are handled via the EAP program in order to streamline the arrest process. In the EAP program, using a supporting deposition, a police officer would check off appropriate boxes, sign the bottom and send the document to the EAP office. The EAP officer becomes the deponent, and the officer who witnessed the conduct becomes the informant. No ADA would be involved in this process until after arraignment. The document itself is filed with the court and given to the defense attorney.

When presented with Prior Case DX 2, Cuevas identified the document as another type of supporting deposition. He said that it differed from the one marked as Prior Case DX 1 as it was "most likely from the DA's Office."¹ He clarified that the deposition in Prior Case DX 1 would have been completed by a police officer at the time of an arrest, and the one in Prior Case DX 2 created after an arrest. He said that both Prior Case DX 1 and 2 were signed by an undercover using an undercover number in the signature line.

Cuevas testified that his office dismissed any prostitution case in which any of the undercover vice officers were involved who were identified as subjects or targets. He noted that his office determined who was a subject or target through the original motion to dismiss filed by William Knisley, a defense attorney, and through additional UC numbers provided by Knisley. Cuevas said the prostitution cases were dismissed regardless of whether the defendant made a motion to dismiss; the DA's Office decided that "the best thing to do was to dismiss the case and allow IAB to conduct the investigation."

Cuevas said that a handwriting analysis report was supplied to the DA's Office. It was attached to "many" motions that were made by Knisley. Cuevas testified that the concern with the depositions not being signed by the actual undercover involved in the case was that it

¹ That is, Prior Case DX 2, a supporting deposition created on a computer, was most likely created at the unit of the DA's Office that writes up criminal complaints at the pre-arraignment stage. This is sometimes called the "complaint room," not to be confused with the Department's "124 room."

constituted perjury. Cuevas explained that all of the supporting depositions are under penalty of perjury and asserted that by signing it, the deponent certifies that he has read the complaint and that it is true based on his involvement.

On cross-examination, Cuevas said that he was not aware of any changes made in training at the DA's Office as a result of the problems with the depositions. Cuevas said that ADAs were not instructed in the past to look at paperwork to ensure that signatures were consistent. He acknowledged that the DA's Office has a training bureau.

Cuevas asserted that he was not involved in the investigation of the cases involving the prostitution supporting depositions.

Upon examination by the Court, Cuevas affirmed that the "check box" supporting depositions were filed with the court and also furnished to a defendant's attorney. It is put in the court's docket.

PENALTY

In order to determine an appropriate penalty, the Respondents' service records were examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent Tauber was appointed to the Department on September 29, 2000. Respondent Lingeza was appointed to the Department on July 2, 2001. Information from their personnel folders that was considered in making this penalty recommendation is contained in the attached confidential memoranda.

The Respondents have been found Guilty, after pleading Guilty and testifying in mitigation of the penalty, of allowing other members of the service to sign supporting depositions on their behalf, or of signing supporting depositions on behalf of other members of the service. Similar cases to those of the Respondents have resulted in an approved negotiated

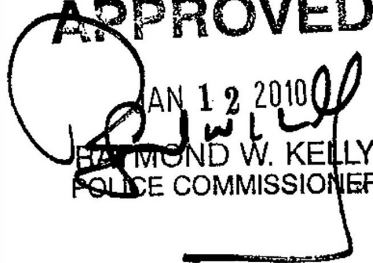
penalty of 30 vacation days. See *Disciplinary Case No. 84026/08*, approved Mar. 30, 2009 (30 vacation days for 11-year member with no prior disciplinary record who signed supporting depositions on behalf of other officers); *Disciplinary Case No. 84027/08*, approved Mar. 10, 2009 (same penalty for 7-year member with no record who signed supporting depositions on behalf of other members and/or allowed others to sign on his behalf). This is an appropriate and fair penalty for the Respondents as well. Accordingly, the Court recommends that each Respondent forfeit 30 vacation days.

Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner – Trials

APPROVED
JAN 12 2010

RAYMOND W. KELLY
POLICE COMMISSIONER